with instruction to prepare payment vouchers in favour of Mr. Pang.

On that evidence it would be difficult to agree with the learned counsel that the appellant's act was innocuous and that he had not intended to deceive the Government. As Buckley J. in *Re London & Globe Finance Corporation Ltd.*[5] says "to deceive is by falsehood to induce a state of mind...". The appellant in this case had induced that state of affairs whereby it resulted in deceiving the Government into paying for the goods it had not received.

In this regard the learned counsel laboriously tried to shift the blame on PW4, who had signed the vouchers and authorised payment, arguing that PW4 was not deceived by the certificates signed by the appellant because PW4 had trusted him and had accepted similar certificates signed by the appellant before. To my mind this exercise is futile. The fact that PW4 had trusted him, which trust was built over a period of time, by the appellant himself, would only allow the appellant better opportunity to deceive him. In my view the appellant deliberately employed a system to commit this offence.

On his submission that the appellant could not have the knowledge that the certificates were intended to mislead the Government, the learned counsel argued that in this case PW4, who had been deceived, was the agent of the appellant's principal and not the principal himself.

With due respect, this argument is most difficult for me to follow. It is an accepted principle that the Government is an abstract norm. The Government works through its agencies. All ministries, departments and public bodies are its agencies and its employees are its agents. An offence may be committed on the Government through these agents or agencies. It is immaterial whether the offender is an individual or its own agent.

In the present case the appellant had intended to mislead the Government by practising deceit on PW4 in which event the Government was misled into paying someone for goods it had not received.

In these circumstances, I hold that there is sufficient evidence to support convictions of the appellant on both the charges. There are other grounds of appeal which the learned counsel has given less emphasis and I consider them to be of no merit.

This appeal is therefore dismissed and convictions confirmed. I will now hear submissions on sentence which was not done during this appeal nor in the court below.

Appeal dismissed.

Solicitors: *K.C.I. Reddi & Co.*

LIM HUI LIAN v. C.M. HUDDLESTAN

[O.C.J. (Yusoff J.) October 31, 1977 & March 10, 1978]
[Kuching — Matrimonial Cause No. K. 20 of 1976]

Family Law — Foreign marriage — Petitioner domiciled in Sarawak — Divorce — Uncontested divorce — Homosexual husband — Sarawak Matrimonial Causes Ordinance (Cap. 94), ss. 4, 6(1)(b), 3(b), & 7.

The petitioner in this case prayed for dissolution of marriage on the ground that circumstances had arisen which in the opinion of the court, made it reasonable and just that the marriage should be dissolved, under section 6(3)(b) of the Sarawak Matrimonial Causes Ordinance.

The petitioner belonged to the Chinese community in Sarawak. She married the respondent in Canada in June 1972. The respondent was a citizen of Canada. In July 1972 she returned to Sarawak, followed by the respondent. In January 1975 the respondent left the matrimonial home and went to Singapore on his way back to Canada. He had indicated to the petitioner that he would not return. While the marriage was subsisting, the petitioner said that the respondent had taken drugs and developed a propensity for homosexuality which she had not encouraged nor consented to. The respondent had brought make friends of his own race back to the matrimonial home and on these occasions he also took drugs and slept with them. In two letters written to the petitioner, the respondent had indicated that he was a homosexual person.

Held, allowing the petition: (1) the provisions of the Sarawak Matrimonial Causes Ordinance (Cap. 94) though made applicable to foreign marriages, were designed to protect local communities;

(2) the court could exercise its jurisdiction to dissolve a foreign marriage on grounds that circumstances had arisen which make it reasonable and just that the marriage should be dissolved, where there was a need to protect local communities.

Cases referred to:-

(1) *Sim Kim Ong* v. *Goh Phaik Sooi* [1976] 1 M.L.J. 232.

(2) *Stratham J.T.* v. *Stratham J.C.* [1929] P.D. 131.

(3) *Davidson* v. *Davidson* [1953] 1 W.L.R. 387.

MATRIMONIAL CAUSE.

Loke Yik Ping for the petitioner.

Respondent not contesting.

Cur. Adv. Vult.

Yusoff J.: This is the wife's petition for dissolution of marriage on the ground that circumstances have arisen which in the opinion of the court, make it reasonable and just that the marriage should be dissolved, under section 6(3)(b) of Sarawak Matrimonial Causes Ordinance (Cap. 94).

The marriage was celebrated in Canada. The petitioner is of Asiatic race and before the date of petition has been habitually resident in Sarawak for more than two years. The respondent is a citizen of Canada. He does not contest this petition.

On first impression, I was of the opinion that by reason of special provisions relating to residence and some grounds for petition for dissolution of marriage in Cap. 94, including the present, this special ground is not available to parties who contracted a foreign marriage.

These special provisions are: with respect to qualification to petition, provisos (i) and (ii) to section 4 which provide that:

"Provided that the court may if it think fit grant a decree under paragraph (a), (b), (c) or (d) —

(i) on the petition of either husband or wife, if the husband being wholly or partly of Asiatic race has been habitually resident in Sarawak for two years or more; or

(ii) on the petition of the wife, if the wife is of a race indigenous to Sarawak or would but for her marriage be domiciled in Sarawak or being wholly or partly of Asiatic race has been habitually resident in Sarawak for two years or more."

and with respect to ground to petition, sections 6(3)(b) and 7 which provide:

"6(3) If the court is satisfied —

(a) ....

(b) that circumstances have arisen which in the opinion of the court make it reasonable and just that the marriage should be dissolved, the court may grant a decree of dissolution of marriage on such terms as may be just, and subject to such conditions as the court may think fit to attach.

7. If two married persons mutually agree that their marriage should be dissolved and if either —

(a) the marriage was celebrated before a civil authority; or

(b) neither of the petitioners professes Christianity,

they may present a joint petition accordingly and the court may, if it thinks fit, dissolve such marriage on being satisfied that both parties freely consent, and that proper provision is made for the wife and for the support, care and custody of the children, if any, of the marriage, and may attach such conditions to the decree of dissolution as it may deem fit."

These provisions are unique in the sense that they are not provided in other laws dealing with similar subject matter, not even in the laws in other component parts of Malaysia. It was also my impression that these provisions were designed to facilitate local inhabitants of Asiatic race and indigenous people to obtain divorce without requiring strict proof on established grounds.

But having referred to the Federal Court decision in *Sim Kim Ong* v. *Goh Phaik Sooi,*[1] I find that, this question has already been decided. In that case, Lee Hun Hoe C.J. (Borneo) held at 236 that:

"The ordinance clearly seeks to protect local communities bearing in mind that it was enacted in 1932 when Sarawak was still under the Brooke regime.

Cap. 94 is unique and peculiar to Sarawak as it provides for divorce by mutual consent. The High Court in Sarawak has very wide discretion in matter of dissolution of marriage. It may grant a divorce on the petition of a person on the ground that circumstances have arisen which make it reasonable and just to dissolve the marriage (section 6(2)). It may also grant a divorce on ground that circumstances have arisen which in the opinion of the court make it reasonable and just that the marriage should be dissolved. (section 6(3)(b)."

and after construing section 4 and section 7 he further held that:

"There is nothing to prevent the court after hearing evidence from granting a divorce of a marriage celebrated outside Sarawak on the ground that circumstances have arisen which make it reasonable and just to dissolve the marriage."

It seems clear from that decision, that these special provisions, though made applicable to foreign marriages, were designed to protect local communities. For that reason, I am inclined to think that the court could exercise its jurisdiction to dissolve foreign marriages on grounds of circumstances arisen or by mutual consent, where there was a need to protect local communities.

In the light of that decision, I will now proceed to deal with the evidence in this case.

The petitioner belongs to the Chinese community in Sarawak. She contracted this marriage with the respondent in Canada in June 1972. In July the same year, she returned to Sarawak, followed by the respondent. In 1974 they lived and cohabited at Teacher's quarters at Marudi in the district of Baram. In January 1975 the respondent left the matrimonial home and went to Singapore on his way back to Canada. He had indicated to the petitioner that he would not return.

While the marriage was subsisting, the petitioner said that the respondent had taken drugs and developed a propensity for homosexuality which she had not encouraged nor consented. During this period in 1974, the respondent had spent most of his time with his male friends of his own race, including some wayward travellers and drug-takers. The respondent brought these friends back to the matrimonial home and on these occasions he also took drugs and slept with them in the house.

On January 25, 1975 the respondent wrote to her from Singapore. Part of this letter is reproduced below:

"I'm now rolling about in Singapore in search of 'good times', something of which you either wouldn't or couldn't give me. Anyway, I've found someone who's a little more inclined in my direction. His-Her name is Kamal-Brenda, depending on which way you look at it."

On February 3, 1975 the respondent wrote again to her saying that:

"I was rolling around Singapore with a female impersonator from Bugis Street, Brenda and I had a good time together. ... You really could take some lessons from her.... I suggest you start looking for another mate as I really have no intention of returning."

It would appear from these two letters that the respondent is a confessed homosexual person. Homosexuality or sodomy is a ground for dissolution of marriage under section 6(1)(b) of Cap. 94. Decided cases have shown that an act of sodomy committed by the husband on the wife without her invitation or consent, is a ground for divorce. See *Stratham J.T.* v. *Stratham J.C.*[2] and *Davidson* v. *Davidson.*[3]

In the present case, there was no act of sodomy committed on the petitioner but there had been instances where the respondent indulged in this unseemly conduct with his male friends in the matrimonial home. Later, he decided to desert the petitioner to seek this sort of pleasure. These are circumstances which have arisen since the marriage and the court has to consider whether these circumstances make it reasonable and just to dissolve the marriage.

Having regard to the petitioner's upbringing as an Asiatic race of Chinese origin, in my opinion, it is reasonable for her to view the act of sodomy with abhorrence and revolt against such conduct. The act of sodomy is considered shameless and unclean by the community to which she belongs. Such despicable conduct though permitted among some westerners should not be allowed to corrupt the community's way of life.

In my judgment, considering the evidence as a whole, it is just that this marriage should be dissolved. I order that a decree nisi be granted and in view of the fact that the respondent had indicated that he would not return to the matrimonial home and there is no prospect of reunion between the parties, I also order that this decree nisi be made absolute forthwith.

Order accordingly.

Solicitors: *Loke, Kiing & Co.*

PITTING BIN HAJI MOHAMMED ALI v. PUBLIC PROSECUTOR

[A.C.J. (B.T.H. Lee J.) February 22 & June 9, 1978]
[Sandakan — Criminal Appeal No. 30 of 1977]

Criminal Law and Procedure — Appeal — Scope of Criminal Procedure Code (F.M.S. Cap. 6), s. 307(i) — Courts of Judicature Act, 1964, s. 51(2) — Criminal Procedure Code (F.M.S. Cap. 6), s. 307(i) & (iv).

Firearms and Explosives — Appellant charged with carrying a firearm and explosives without permit or licence — Contravention of s. 13(1) of Firearms and Explosives Ordinance, 1956 — Appeal under s. 307(i), Criminal Procedure Code.

The appellant in this case was charged and convicted for carrying a firearm and explosives without a permit or licence in contravention of section 13 of the Firearms and Explosives Ordinance, 1956. He appealed. The petition of appeal was however lodged by the advocate for the appellant. The learned Deputy Public Prosecutor raised the objection that there was no proper appeal under section 307 of the Criminal Procedure Code. Section 307(i) reads as follows: "... any person who is dissatisfied with any judgment, sentence, or order pronounced by any Magistrates Court in any criminal case or matter *to which he is a party* may prefer an appeal...." and section 307(iv) states: "within ten days after the copy of grounds of decision has been served as in the last preceding subsection provided, the *appellant shall lodge*... a petition of appeal...."

Held: (1) the appeal ought to be dismissed by reason of the appellant's complete failure to conform with the provision of section 307(iv);

(2) it is not a proper use of counsel's discretion to raise no objection at the time in order to preserve a ground or objection for a possible appeal;

(3) the prohibition contemplated by the provisions of the Firearms and Explosives Ordinance, 1956 is absolute and there was no obligation on the part of the prosecution to prove *mens rea.*

Cases referred to:-

(1) *Municipal Commissioner, Malacca* v. *Teh Chwee Swi* [1971] 2 M.L.J. 274.
(2) *R.* v. *McReady* reported in the *London Times* dated March 11, 1978.
(3) *Muthusamy* v. *Public Prosecutor* [1948] M.L.J. 57.
(4) *Jusoh Bin Awang* v. *Public Prosecutor* [1950] M.L.J. 69.
(5) *R.* v. *Chua Eng Hong* [1937] M.L.J. Rep. 247.
(6) *R.* v. *Stirland* 30 C.A.R. 56.
(7) *Sulong Bin Nain* v. *Public Prosecutor* [1947] M.L.J. 138.
(8) *R.* v. *Faulkner* [1972] 56 C.A.R. 594.
(9) *Marimuthu* v. *Public Prosecutor* [1974] 2 M.L.J. 145, 146.

CRIMINAL APPEAL.

Abdul Razak Rouse for the appellant.

Abdul Wahab Patail (Deputy Public Prosecutor) for the respondent.

B.T.H. Lee J.: The appellant was charged with two counts for carrying a firearm and explosives respectively without a permit or licence in contravention of section 13(1) of the Firearms and Explosives Ordinance, 1956 (No. 17 of 1956) (hereinafter called "the Ordinance").

The appellant claimed trial and was represented by counsel. In the event he was convicted and sentenced in respect of the First Charge to three (3) months' imprisonment and fined $2,000, in default one (1) month's imprisonment; and in respect of the Second Charge to two (2) months' imprisonment, the sentences to run consecutively. Against these convictions and sentences the appellant has now appealed on a number of grounds.

A preliminary point was raised by the learned Deputy Public Prosecutor grounded on the provisions of section 307 of the Criminal Procedure Code (hereinafter referred to as "the Code") alleging that there was no proper appeal before this court. The right of appeal is given by section 307(i) of the Code which, omitting the irrelevant parts, reads as follows: —

"... any person who is dissatisfied with any judgment, sentence, or order pronounced by any Magistrate's Court in a criminal case or matter *to which he is a party* may prefer an appeal...."

and section 307(iv) provides that —

"within ten days after the copy of grounds of decision has been served as in the last preceding subsection provided, the *appellant shall lodge*... a petition of appeal...."

It was contended by the learned Deputy that counsel or advocate for the petitioner in the Petition of Appeal is not such a person. The only provisions of the law which the court is able to discover where "appellant or his advocate" appears are to be found in section 307(ii) and (iii) of the Code.

Section 307(ii) speaks of notices or documents connected with the appeal which may be served upon the appellant or upon his advocate, and section 307(iii) provides a copy of the grounds of decision to be served upon the appellant or his advocate.

In support of the learned Deputy's argument, the case of *Municipal Commissioner, Malacca* v. *Teh Chwee Swi*[1] was cited. In that case the Municipal Commissioner presented an appeal to the High Court. The issue there was the question whether having regard to the provisions of section 307 of the Code it can be said that the Commissioner could file an appeal in his own name and right. It was there held that since the Public Prosecutor is the only person who could have appealed, the appeal then before the court was incompetent and consequently dismissed.

Counsel for appellant however cited section 51(2) of the Courts of Judicature Act, 1964, in support of the view that counsel may appeal on behalf of an accused person. Section 51(2) is in these terms: —

"Every notice of appeal shall state shortly the substance of the judgment appealed against, shall contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his advocate, and except where the notice of appeal is given orally under section 54, shall be signed by the appellant or his advocate."

So far from that being shown in appellant's favour,